IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.8201 OF 2005

1. Pankaj Kantilal Morakhia
2. Shrenik Ashokkumar Morakhia ...Applicants

Vs.

Union of India & Ors. ...Respondents

Shri A.Y. Sakhare, Senior Counsel with S.S. Kulkarni i/by Halai & Co. for the Applicants.
Shri H.V. Mehta with J.C. Satpute for the Respondent No.1.
Shri K.V. Saste, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 16, 2005.

P.C.:

1. Mentioned. Not on board.

2. This is transitory anticipatory bail application.

3. The Applicants are Directors of Company Morakhia Metal and Alloys Pvt. Ltd. They are residing in Mumbai. The factory as well as registered office of this Company is at Ahemdabad in the State of Gujarat. It appears from the perusal of the averments in the Application that the Company has been charged with violation of the provisions of the Central Excise Act and Rules made thereunder. The office of the Commissioner of Central Excise, Mumbai had given

notice and summons to the two witnesses under section 14 of the said Act. Statements have been recorded as pointed out in paragraph No.5 of this Application.

4. However, the department was not satisfied with the statement and the details furnished as well as the documents tendered by these witnesses. The Director Mr Prakash Kantilal Morakhia of this Company was summoned to furnish details. That was pursuant to the powers incurred on the authorities under section 14 of the Central Excise Act, 1944. However, my attention is invited by Shri. Sakhare, learned Senior Counsel appearing for the Applicants to the fact that this Director Mr Prakash Kantilal Morakhia was detained during recording of his statement. He has been charged with not just violating the provisions of Central Excise Act, but also for offence punishable under section 420 of the Indian Penal Code read with section 120-B thereof. The Applicants apprehend same treatment at the hands of the Commissionerate at Ahemdabad.

5. Shri Sakhare upon taking instructions from the Applicants states that they are willing to attend the office of the Central Excise Commissionerate, Ahemdabad III (Preventive Wing) and are also agreeable

to furnish such details as are sought for by the said Commissionerate. However, apprehension is that they would be arrested straightaway at the instance of the said Commissionerate and taken to Ahemdabad.

6. Shri Satpute appearing for the Union of India as well as Mumbai Commissionerate makes a statement that as far as Mumbai Commissionerate is concerned, the Applicants are not being summoned for the time being. He has no instructions to make any statement with regard to the Commissionerate at Ahemdabad.

7. Initially, this matter was kept back by me to ascertain as to whether violation of the Central Excise Act is alleged or that the ingredients of section 438(1) with regard to apprehension of arrest in connection of non-cognizable offence is made out. Upon perusal of arrest memorandum pertaining to Mr Prakash Kantilal Morakhia and copy of the production report seeking this police remand, I am satisfied that the Applicants apprehension is, primafacie, justified.

8. Hence, in the light of the above observation, following order:

: O R D E R :

i) Upon the Applicants attending the said Commissionerate at Ahemdabad on or before 21st December, 2005 and in response to the summons under section 14 of the Central Excise Act, 1944, they shall not be arrested till then.

ii) Shri Sakhare appearing for the Applicants states that the Applicants would appear before the said Commissionerate at Ahemdabad on 21st December, 2005.

iii) Needless to state that upon the Applicants attending the Commissionerate at Ahemdabad, it would be open for them to apply for such reliefs as are permissible in law. In the event they are apprehending arrest, it would be open to them to apply for identical reliefs before the Gujarat High Court or the Sessions Court as they deem it fit and proper.

iv) This Order would continue till 21st December, 2005.

v) Application is disposed of in above terms.

JUDGE